

[First Reprint]

SENATE, No. 458

STATE OF NEW JERSEY
212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:

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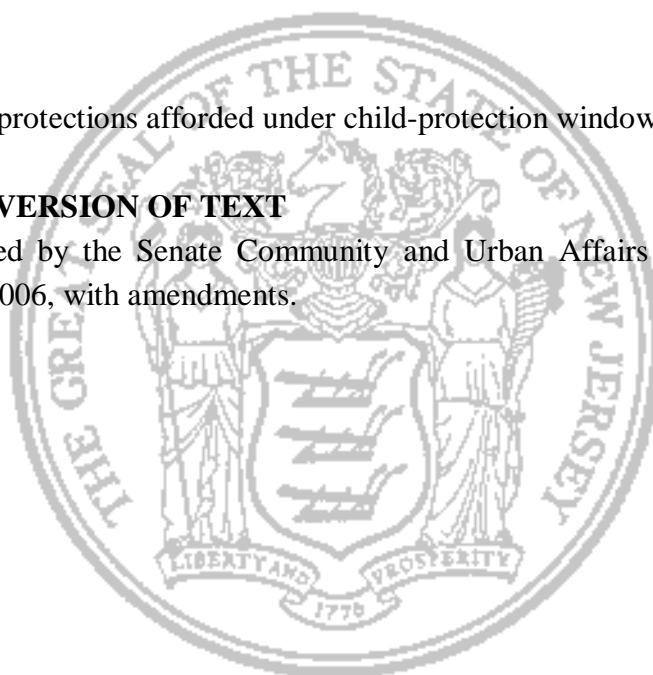
Senator Allen and Assemblyman Gordon

SYNOPSIS

Enhances protections afforded under child-protection window guard law.

CURRENT VERSION OF TEXT

As reported by the Senate Community and Urban Affairs Committee on January 26, 2006, with amendments.



(Sponsorship Updated As Of: 6/23/2006)

1 AN ACT concerning child-protection window guards and amending
2 'and supplementing' P.L.1995, c.120.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 1 of P.L.1995, c.120 (C.55:13A-7.12) is amended to
8 read as follows:

9 1. As used in this act[,] :

10 "child-protection window guard" or "window guard" means a
11 bar, screen or grille assembly designed to be installed in a window
12 for the purpose of preventing accidental fall or ejection of a child
13 through the window. It shall be so designed, constructed and
14 installed that no person of the age of 10 years or younger may
15 through accident, ignorance or inadvertence, remove, open or
16 dislodge it so as to permit such fall or ejection. Such window
17 guards shall conform to specifications developed by the
18 commissioner regarding design, construction and installation so as
19 to accomplish the purpose of this act. A municipality may adopt
20 standards that afford tenants greater protections than are provided
21 pursuant to the commissioner's specifications.

22 The commissioner's specifications for double hung windows
23 shall ensure that window guards protect the full openable area of
24 each lower window. The specifications shall provide that all
25 window guards shall be designed and installed as to ensure that any
26 space between the lowest section of the top horizontal bar of the
27 window guard and the bottom of the upper sash is less than four
28 inches. Installation of rigid metal stops in the upper tracks of a
29 bottom window or other attempts to limit the ability to raise the
30 bottom window shall not be an acceptable method of satisfying the
31 specifications provided for in this section. Window stops may be
32 utilized as a safety enhancement when used in addition to installed
33 window guards.

34 "common interest community" means a horizontal property
35 regime, condominium, cooperative, or mutual housing corporation
36 in which some of the property, known as common elements, is
37 owned as tenants-in-common by all of the property owners.

38 "unit owners' association" means the association organized for
39 the purpose of management of the common elements and facilities
40 of a common interest community.

41 (cf: P.L.1995, c.120, s.1)

42
43 2. Section 2 of P.L.1995, c.120 (C.55:13A-7.13) is amended to
44 read as follows:

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCU committee amendments adopted January 26, 2006.

1 2. a. (1) Except as provided in subsection b. of this section, the
2 owner, lessor, agent or other person who manages or controls a
3 multiple dwelling, other than a multiple dwelling which is part of a
4 common interest community, shall, upon the written request of a
5 tenant of a unit in which a child or children 10 years of age or under
6 reside or will reside or are regularly present for a substantial period
7 of time, provide, install and maintain **[a]** approved child-protection
8 window **[guard]** guards on the windows of **[each]** the dwelling
9 unit **[in which a child or children 10 years of age or under reside]**
10 and on any windows in the public halls of a multiple dwelling in
11 which any child or children of such age reside or are regularly
12 present for a substantial period of time.

13 (2) (a) Except as provided in subsection b. of this section, the
14 owner, lessor, agent or other person who controls a unit of dwelling
15 space in a multiple dwelling within a common interest community,
16 upon the written request of a tenant of a unit in which a child or
17 children 10 years of age or under reside or will reside or are
18 regularly present for a substantial period of time, shall provide,
19 install and maintain child-protection window guards on the
20 windows of the unit.

21 (b) The owner, lessor, agent or other person who controls a unit
22 of dwelling space in a multiple dwelling within a common interest
23 community shall provide written notice to the unit owners'
24 association whenever a tenant of a unit, in which a child or children
25 10 years of age or under reside or will reside or are regularly
26 present for a substantial period of time, has requested that child-
27 protection window guards be installed on the windows in the
28 common areas of the common interest community.

29 (3) (a) Except as provided in subsection b. of this section, upon
30 the written request of an owner or an occupant of a dwelling unit of
31 a multiple dwelling within a common interest community, 'in which
32 dwelling unit a child or children 10 years of age or under reside or
33 will reside or are regularly present for a substantial period of time,'
34 the unit owners' association shall install and maintain child-
35 protection window guards on the windows which are determined to
36 be in common areas of the community property and maintained by
37 the association.

38 (b) A unit owners' association shall not adopt or seek to enforce
39 any restrictions or architectural controls which would prohibit or
40 impede the installation of a window guard in compliance with
41 P.L.1995, c.120 (C.55:13A-7.12 et seq.).

42 b. '(1)' The requirements of subsection a. of this section shall
43 apply to all windows, except those windows which give access to a
44 fire escape **[or]**, which are not designed to open, or which are on
45 the first floor; provided, however, that the requirements of
46 subsection a. of this section shall apply to first floor windows in
47 such circumstances as the commissioner may provide by rule. **[In**

1 addition, the provisions of this act shall not apply to any window in
2 (1) an owner occupied dwelling unit, (2) a dwelling unit which is a
3 part of a condominium or which is held by a proprietary lessee
4 under a cooperative form of ownership, or (3) a dwelling unit
5 occupied by a shareholder in a mutual housing corporation.】

6 ¹(2) The requirements of subsection a. of this section shall not
7 apply to seasonal rental units. “Seasonal rental unit” means a
8 dwelling unit rented for a term of not more than 125 consecutive
9 days for residential purposes by a person having a permanent
10 residence elsewhere, but shall not include use or rental of living
11 quarters by migrant, temporary or seasonal workers in connection
12 with any work or place where work is being performed. The owner,
13 lessor, agent or other person who controls a dwelling unit shall have
14 the burden of proving that the rental is seasonal.¹

15 c. Any child-protection window guard installed pursuant to [this
16 act】 P.L.1995, c.120 (C.55:13A-7.12 et seq.) shall conform to the
17 requirements of the State Uniform Construction Code with respect
18 to means of emergency egress, and a window guard installed on an
19 emergency egress window shall be releasable or removable from the
20 inside without use of a key, tool or excessive force. Window
21 guards installed on all other windows shall be designed,
22 constructed, and installed so that they may not deliberately or
23 through accident, ignorance or inadvertence, be removed, opened,
24 or dislodged without the use of a key or tool.

25 d. (1) Upon installation of a child-protection window guard in a
26 dwelling unit, and annually thereafter, the owner, lessor, agent or
27 other person who manages and controls that dwelling unit shall
28 provide the tenant with an orientation concerning the safe use and
29 manipulation of window guards in accordance with guidelines
30 established by the Commissioner of Community Affairs pursuant to
31 section 5 of P.L.1995, c.120 (C.55:13A-7.16).

32 (2) Upon installation of a child-protection window guard in the
33 common areas of a multiple dwelling, and annually thereafter, the
34 owner, lessor, unit owners' association, agent or other person who
35 manages and controls the common areas of the multiple dwelling
36 shall provide the occupants of the multiple dwelling with an
37 orientation concerning the safe use and manipulation of window
38 guards in accordance with guidelines established by the
39 Commissioner of Community Affairs pursuant to section 5 of
40 P.L.1995, c.120 (C.55:13A-7.16).

41 e. At least twice annually, the owner, lessor, unit owners'
42 association, agent or other person who manages and controls a unit
43 of dwelling space in a multiple dwelling, the common areas of the
44 multiple dwelling, or both, in which child protection window guards
45 have been installed, shall inspect each such window guard under
46 their control to ensure that it remains sound and in conformance
47 with the provisions of P.L.1995, c.120 (C.55:13A-7.12 et seq.), and

1 shall enter a record of such inspection in a log, which shall be
2 maintained as a permanent record so long as the window guard
3 remains installed, and for five years thereafter, and which shall be
4 available upon request to the department or its duly authorized
5 representative.

6 f. A tenant or unit owner may file a complaint with the
7 commissioner for the failure to comply with the provisions of
8 P.L.1995, c.120 (C.55:13A-7.12 et seq.). The commissioner shall
9 investigate complaints within a reasonable time period. The
10 commissioner may impose penalties authorized under the "Hotel
11 and Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-1 et seq.)
12 for violations concerning the installation of child-protection
13 window guards and may institute a criminal complaint for a repeat
14 conviction after the imposition of a \$5,000 civil penalty for a
15 continuing violation pursuant to section 19 of P.L.1967, c.76
16 (C.55:13A-19).

17 g. To the extent that a violation of P.L.1995, c.120 (C.55:13A-
18 7.12 et seq.) has occurred within a rental unit in a common interest
19 community, such violation shall be noticed to, and resultant
20 penalties imposed upon, the unit owner of such rental unit and not
21 the unit owners' association.

22 h. To the extent that a violation of P.L.1995, c.120 (C.55:13A-
23 7.12 et seq.) has occurred within the common areas of a common
24 interest community, such violation shall be noticed to, and resultant
25 penalties imposed upon, the unit owners' association.

26 (cf: P.L.1995, c.120, s.2)

27
28 3. Section 3 of P.L.1995, c.120 (C.55:13A-7.14) is amended to
29 read as follows:

30 3. a. All leases offered to tenants in multiple dwellings shall
31 contain a notice, conspicuously set forth therein in prominent
32 boldface type, advising tenants and prospective tenants of the
33 availability of window guards under **[this act]** P.L.1995, c.120
34 (C.55:13A-7.12 et seq.) and the need for a tenant to request in
35 writing the installation of window guards. 'In the case of a
36 cooperative, as defined in P.L.1987, c.381 (C.46:8D-1 et seq.),
37 formed prior to the effective date of P.L. , c. (C.) (pending
38 before the Legislature as this bill), the notice required by this
39 subsection shall not be required in proprietary leases.'¹

40 b. (1) At the time of lease signing, the owner, lessor, agent or
41 other person who manages or controls a unit of dwelling space in a
42 multiple dwelling shall verbally inform the tenant of the tenant's
43 right to request the installation of window guards under P.L.1995,
44 c.120 (C.55:13A-7.12 et seq.). Verification that this verbal notice
45 was provided and understood shall be set forth in a written
46 document, aside from the lease document itself, which written
47 document shall acknowledge that the tenant was made aware of the

1 right to request the installation of window guards and which shall
2 be signed by both the tenant and the owner, lessor, agent or other
3 person who manages or controls the unit of dwelling space.

4 (2) (a) The owner, lessor, agent or other person who manages or
5 controls a multiple dwelling unit or a rental unit within a common
6 interest community shall cause to be delivered to each dwelling unit
7 【an annual】 so managed or controlled, twice annually, a notice, in
8 form and manner prescribed by the commissioner, advising
9 occupants of the obligation of the said owner, lessor, agent or other
10 person to install child-protection window guards pursuant to section
11 2 of 【this act】 P.L.1995, c.120 (C.55:13A-7.13). For the purposes
12 of this section, an owner of a rental unit located within a common
13 interest community, and not the unit owners' association, shall be
14 deemed to be the managing agent of that rental unit. A lease
15 provision notifying a tenant of the availability of window guards
16 may satisfy one of the notice requirements of this subparagraph.

17 (b) The owner, lessor, unit owners' association, agent or other
18 person who manages or controls the common areas of a multiple
19 dwelling shall cause to be delivered to each dwelling unit, twice
20 annually, a notice, in form and manner prescribed by the
21 commissioner, advising occupants of the obligation of the said
22 owner, lessor, unit owners' association, agent or other person to
23 install child-protection window guards pursuant to section 2 of
24 P.L.1995, c.120 (C.55:13A-7.13). A lease provision notifying a
25 tenant of the availability of window guards may satisfy one of the
26 notice requirements of this subparagraph.

27 (3) The owner, lessor, unit owners' association, agent or other
28 person who manages or controls the common areas of a multiple
29 dwelling shall cause to be conspicuously posted and prominently
30 displayed in the common areas of that dwelling a notice: advising
31 the occupants of the obligation of the owner, lessor, unit owners'
32 association, agent or other person to install child-protection window
33 guards pursuant to section 2 of P.L.1995, c.120 (C.55:13A-7.13)
34 and advising tenants to check their window guards on a regular
35 basis and to report any problems or concerns to the owner, lessor,
36 unit owners' association, agent or other person who manages or
37 controls the multiple dwelling.

38 c. Notwithstanding any municipal ordinance to the contrary,
39 expenditures not exceeding \$20 per window guard installed in a
40 dwelling unit that are made pursuant to 【this act】 P.L.1995, c.120
41 (C.55:13A-7.12 et seq.) 【shall be deemed to be capital improvement
42 costs, which may】 may be passed on to the 【tenants of the multiple
43 dwelling】 tenant who requested installation of the window guard.

44 (cf: P.L.1995, c.120, s.3)

45
46 4. Section 4 of P.L.1995, c.120 (C.55:13A-7.15) is amended to
47 read as follows:

1 4. No tenant or occupant of a multiple dwelling unit, or any
2 other person, shall obstruct or interfere with the installation of
3 child-protection window guards required under section 2 of [this
4 act] P.L.1995, c.120 (C.55:13A-7.13) , nor shall any person remove
5 or otherwise render ineffective such window guards; provided,
6 however, that the owner or the representative of the owner may
7 remove window guards from an unoccupied unit or, with the
8 consent of the tenant, from a unit in which no child 10 years of age
9 or under resides or is regularly present for a substantial period of
10 time; and provided, further, that the owner or the representative of
11 the owner shall remove window guards when requested to do so by
12 the tenant in writing.

13 (cf: P.L.1995, c.120, s.4)

14
15 5. Section 5 of P.L.1995, c.120 (C.55:13A-7.16) is amended to
16 read as follows:

17 5. a. The commissioner is hereby authorized to make and
18 promulgate, pursuant to the "Administrative Procedure Act,"
19 P.L.1968, c.410 (C.52:14B-1 et seq.), all regulations necessary to
20 carry out [this act] P.L.1995, c.120 (C.55:13A-7.12 et seq.),
21 including, but not limited to, regulations regarding the design,
22 construction, and installation of window guards. The commissioner
23 shall promulgate model forms and lease provisions for the notices
24 required to be provided pursuant to P.L.1995, c.120 (C.55:13A-7.12
25 et seq.) and specifications for inspections and log-keeping
26 requirements.

27 b. The commissioner shall establish guidelines for orientation
28 programs designed to educate tenants about the safe use and
29 manipulation of window guards and their rights concerning child-
30 protection window guards pursuant to P.L.1995, c.120 (C.55:13A-
31 7.12 et seq.) and ensure that an orientation program is offered
32 annually prior to March 1 of each year in the following:

33 (1) every multiple dwelling of at least four stories in height
34 which was built with public funds or public assistance, or financed,
35 in whole or in part, by a loan guaranteed or insured by the federal
36 government or any agency thereof, including the allocation of low-
37 income tax credits; and

38 (2) every multiple dwelling of at least four stories in height in
39 which a recipient of State or federal rental assistance resides.

40 Notice of the orientation program shall be posted in appropriate
41 common areas of the building at least two weeks prior to the date of
42 the program.

43 (cf: P.L.1995, c.120, s.5)

44
45 6. Section 19 of P.L.1967, c.76 (C.55:13A-19) is amended to
46 read as follows:

47 19. (a) No person shall

1 (1) Obstruct, hinder, delay or interfere with, by force or
2 otherwise, the commissioner in the exercise of any power or the
3 discharge of any function or duty under the provisions of **[this act]**
4 P.L.1967, c.76 (C.55:13A-1 et seq.); or

5 (2) Prepare, utter or render any false statement, report,
6 document, plans or specifications permitted or required to be
7 prepared, uttered or rendered under the provisions of **[this act]**
8 P.L.1967, c.76 (C.55:13A-1 et seq.); or

9 (3) Render ineffective or inoperative any protective equipment
10 installed, or intended to be installed, in any hotel or multiple
11 dwelling; or

12 (4) Refuse or fail to comply with any lawful ruling, action, order
13 or notice of the commissioner; or

14 (5) Violate, or cause to be violated, any of the provisions of
15 **[this act]** P.L.1967, c.76 (C.55:13A-1 et seq.).

16 (b) Any person who violates, or causes to be violated, any
17 provision of subsection (a) of this section shall be liable to a penalty
18 of not less than \$50.00 nor more than \$500.00 for each violation,
19 and a penalty of not less than \$500.00 nor more than \$5,000.00 for
20 each continuing violation. Penalties imposed for violations relating
21 to child-protection window guards pursuant to the provisions of
22 P.L.1995, c.120 (C.55:13A-7.12 et seq.) shall be no less than \$100
23 for each window or incident. Whenever a violator is convicted of
24 knowingly continuing to violate a provision of P.L.1995, c.120
25 (C.55:13A-7.12 et seq.) relating to child-protection window guards
26 after the imposition of a penalty of \$5,000 pursuant to this section,
27 the violator shall be guilty of a crime of the fourth degree. Where
28 any violation of subsection (a) of this section is of a continuing
29 nature, each day during which such continuing violation remains
30 unabated after the date fixed by the commissioner in any order or
31 notice for the correction or termination of such continuing violation,
32 shall constitute an additional, separate and distinct violation, except
33 during the time an appeal from said order may be taken or is
34 pending. The commissioner, in the exercise of his administrative
35 authority pursuant to this act, may levy and collect penalties in the
36 amounts set forth in this section. Where the administrative penalty
37 order has not been satisfied within 30 days of its issuance the
38 penalty may be sued for, and recovered by and in the name of the
39 commissioner in a civil action by a summary proceeding under "The
40 Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et
41 seq.) in the Superior Court.

42 (c) Any person shall be deemed to have violated, or to have
43 caused to be violated, any provision of subsection (a) of this section
44 whenever any officer, agent or employee thereof, under the control
45 of and with the knowledge of said person shall have violated or
46 caused to be violated any of the provisions of subsection (a) of this
47 section.

1 (d) The commissioner may cancel and revoke any permit,
2 approval or certificate required or permitted to be granted or issued
3 to any person pursuant to the provisions of this act if the
4 commissioner shall find that any such person has violated, or
5 caused to be violated, any of the provisions of subsection (a) of this
6 section.

7 (e) Any penalties collected pursuant to this section levied as the
8 result of a violation of subsection (w) of section 7 of P.L.1967, c.76
9 (C.55:13A-7) and which occurred pursuant to inspection for
10 lead-based paint hazards shall be deposited in the Lead Hazard
11 Control Assistance fund established pursuant to section 4 of
12 P.L.2003, c.311 (C.52:27D-437.4). Penalties levied as the result of
13 multiple violations shall be allocated to the Lead Hazard RHM
14 Control Assistance fund in such proportion as the commissioner
15 shall prescribe.

16 (cf: P.L.2003, c.311, s.20)

17

18 '7. (New section) P.L.1995, c.120 (C.55:13A-7.12 et seq.) shall
19 be known and may be cited as the "Robert E. Dwight, Jr. Raquan
20 Ellis and Zahir Atkins Memorial Child-Protection Window Guard
21 Law."¹

22

23 '[7.] 8.'¹ This act shall take effect immediately.